

**82-1424**  
No. \_\_\_\_\_

Office-Supreme Court, U.S.

FILED

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ALEXANDER L. STEVAS,  
CLERK

IN THE  
SUPREME COURT FOR THE UNITED STATES

OCTOBER TERM, 1982

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UNITED STATES OF AMERICA, Respondent

v.

ROOSEVELT CHAMBERS, Petitioner

---

ON WRIT OF CERTIORARI FROM THE  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

---

PETITION FOR CERTIORARI

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## I. QUESTIONS PRESENTED

1. Whether a Terry-stop has occurred when an airline passenger is approached at a terminal by a narcotics officer and is asked to accompany him to what he calls a "dis-closed room"?

2. Whether there is reasonable articulable suspicion for a Terry-stop where police officers are acting on a mere hunch unsupported by a drug-courier-profile or any conduct of the defendant other than the fact that he bought a one-way ticket, looked at an agent out of the corner of his eye, and twice glanced at his bag as it was being conveyed to his airplane.

3. Whether an airline passenger's consent to a search of his checked bag and carry-on luggage is revoked when the passenger runs out of the airport, carrying one of the bags, and is chased by the police.

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#### Constitutional Provisions

United States Constitution, Amendments Four  
and Fourteen

#### Miscellaneous

LaFave, Search and Seizure (1978)

#### IV. OPINION BELOW

On 20 December 1982, the United States Court of Appeals for the Ninth Circuit affirmed defendant's conviction for Interstate Travel in Aid of Racketeering (18 USC §§ 1952(a)(3) and 2). The Court's opinion is not reported, but is set out at Appendix C to this petition. No motion to stay the mandate or for rehearing was filed. The mandate was issued on 11 January 1983. A motion to recall the mandate was filed on 26 January 1983, advising the Circuit Court of defendant's intention to petition for Certiorari.

#### V. JURISDICTIONAL GROUNDS

The jurisdiction of this Court is invoked under 28 USC § 1254 for a Writ of Certiorari from the United States Court of Appeals for the Ninth Circuit to review their opinion in this case entered on 20 December 1982.

#### VI. CONSTITUTIONAL PROVISION

This petition raises questions involving the United States Constitution, Amendment

Four and Fourteen.

Fourth Amendment

"The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be search, and the persons or things to be seized."

Fourteenth Amendment

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

**VII. STATEMENT OF THE CASE**

**A. Statement of the Facts**

On 14 December 1981, Roosevelt Chambers, entered the Fort Lauderdale Airport carrying an American Tourister suitcase and leather carry-on bag. He was dressed in a jacket and

tie. He immediately went to the Delta Air-line ticket counter and, using his American Express credit card, purchased a one-way ticket to Portland, Oregon. He did not display any cash. His suitcase was checked and placed on the baggage conveyor belt. Taking his ticket, he began to walk toward the departure terminal. Shortly thereafter, he was approached by Officer Capone, a plain-clothed, armed, Barrow County Deputy Sheriff assigned to the Narcotics Unit.

Agent Capone showed Chambers his badge and identification and asked in a voice he had "studied and practiced," if Chambers would "mind speaking to me." Chambers replied, "Sure." Upon request, Chambers provided his airline ticket which was inspected and returned. At that time, Capone advised Chambers that he was a narcotics officer and asked Chambers to accompany him to what he called the "disclosed room." That room was later described as being windowless

and having dimensions of approximately 10 by 20 feet. Chambers replied, "you can look" and then bolted from the terminal carrying his leather bag. Capone placed his revolver in plain view in his waistband and gave chase, yelling "stop police."

After Capone returned empty handed from the chase, he and his partner forced open Chambers' locked suitcase which had been removed from the conveyor belt after Chambers had run (District Court's finding of fact, RT 76). The search discovered approximately two kilograms of Cocaine.

Chambers' ticket, charge card and suitcase all bore his true name. The ticket also contained printed terms of bailment of his baggage to Delta Airlines specifying that it would be "delivered to bearer of baggage check." (RT. 42)

According to Capone, he had approached Chambers because Chambers had looked at him out of the corner of his eye, had stared at the ticket counter and had twice glanced at



his bag as it was on the conveyor belt. The deputies had received no information that Chambers would be carrying drugs and did not rely upon any form of a drug-courier-profile. The encounter with Chambers lasted three to four minutes.

The defendant did not testify at the motion to suppress, and all of the facts stated in this petition are based on the testimony of the Government's witnesses.

The District Court concluded:

(1) The encounter was based on a mere "hunch" rather than reasonable suspicion;

(2) It was not a "stop" but rather an encounter not amounting to a Fourth Amendment seizure;

(3) Chambers consented to the search of his suitcase; and

(4) Chambers abandoned his suitcase by fleeing.

The defendant's motion to suppress was,

thus, denied, and after a stipulated facts trial he was was convicted of Interstate Travel in Aid of Racketeering. He was sentenced to four years in the custody of the Attorney General.

B. The Basis for Federal Jurisdiction in the District Court

The defendant was charged with a violation of the penal laws of the United States, specifically, 18 USC §§ 1952(a)(3) and 2.

VIII. ARGUMENT

A. This case raises questions of the demarcation of a Terry "stop" which have not yet been answered by this Court

The District Court, in denying defendant's motion to suppress, stated the reason this case merits review: "If I follow Mendenhall [United States v. Mendenhall, 446 US 544 (1950)], I would deny the motion; if I follow Reed [sic, Reid v. Georgia, 448 US 438 (1980)] I would grant the motion." (RT. 77)

This Court has granted Certiorari and heard arguments in a closely paralled case which may, indeed, be decisive here. In

Florida v. Royer, (Supreme Court No. 80-2146) this Court is also considering whether an airport police-citizen encounter was a Terry-"stop" (i.e., a "seizure" under the Fourth Amendment) or a non-seizure, mere encounter. Whether the encounter-versus-stop question presented here is different from that in Royer will depend on the test adopted by this Court in that latter case. This case may, thus, be resolved by Royer and disposed of by a remand for reconsideration in light of Royer. Or, the distinction between the facts here and those in Royer may merit full consideration by this Court to elaborate upon a Royer holding. In advance of a decision in Royer, the need for plenary consideration is speculative.

In Royer, as the facts appear from the briefs and the transcript of oral argument before this Court, the defendant was approached by narcotics agents at the Miami Airport who focused on him based on their drug-courier-profile. The agents identified themselves

and showed their badges. Royer was asked to produce his ticket, which he did. The ticket was not immediately returned. The police told Royer they suspected him of carrying drugs, and they asked him to accompany them to an interrogation room. After entering the room, and in response to a police request, Royer opened his suitcase.

The Department of Justice, as amicus curiae argued, "We strongly disagree that there was a seizure at the point of initial contact," (Tr. of Oral Argument, p. 28).

The threshold issue in both cases is what is a "stop" and from whose prospective is it to be decided? In other words, what degree of intrusion raises a mere encounter to a stop, and is that intrusion to be viewed from the prospective from a hypothetical reasonable person, the defendant or the police?

B. What is a stop

Neither Terry v. Ohio, 392 US 1 (1968), nor Sibron v. New York, 392 US 41 (1968),

defined a "stop," although both cases distinguished it from the right of a police officer to address questions to an individual. The unanimous opinion of this Court in Brown v. Texas, 443 US 47 (1979), prophesied a dividing line. There, uniformed officers got out of their patrol car, approached a man walking in an alley and asked him to identify himself and explain what he was doing there. When the man refused to comply, he was arrested for violation of a statute making it a crime to refuse to identify oneself when lawfully stopped. This Court reversed his conviction, holding that the statute, when applied to a stop not based on reasonable suspicion, violated the Fourth Amendment. In reaching that conclusion, the Court stated:

"When the officers detained appellant for the purpose of requiring him to identify himself, they performed a seizure of his person subject to the requirements of the Fourth Amendment." 443 US at 50.

In the same year, this Court decided Dunaway v. New York, 442 US 200 (1979). The

facts in that case were summarized by the opinion of the dissenting justices as follows:

"[T]hree police officers were dispatched to petitioner's house to question him about his participation in a robbery. According to the testimony of the police officers, one officer approached a house where petitioner was thought to be located and knocked on the door. When a person answered the door, the officer identified himself and asked the individual his name. \* \* \* After learning the person who answered the door was petitioner, the officer asked him if he would accompany the officers to police headquarters for questioning, and petitioner responded that he would. \* \* \* "

The majority held (442 US at 222, 3)

"there can be little doubt that petitioner was 'seized' in the Fourth Amendment sense when he was taken involuntarily to the police station." 442 US at 207.

In the following term, in United States v. Mendenhall, 446 US 544 (1980), this Court, without a majority opinion, affirmed a defendant's conviction for transporting drugs. Justices Stewart and Rehnquist concluded that no "seizure" had occurred when defendant was,

while walking through an airport concourse, approached by drug agents who identified themselves and asked to see her ticket. Concurring in the result, Justices Powell and Blackman and the Chief Justice, did not reach the "seizure" issue. 446 US at 560, et seq. The four dissenting justices, in an opinion by Justice White, would have held that the issue was not properly before the Court, but noted "a majority of the members of the Court refused to reject the conclusion that Ms. Mendenhal was 'seized' \* \* \* ." 446 US at 566. The dissent went on to state (in reliance upon Dunaway v. New York, supra):

"Whatever doubt there may be concerning whether Ms. Mendenhall's Fourth Amendment interests were implicated during the initial stages of her confrontation with the DEA agents, she undoubtedly was 'seized' within the meaning of the Fourth Amendment when the agents escorted her from the public area of the terminal to the DEA office for questioning and a strip-search of her person." 446 US at 574.

Four justices of this Court, thus, hold to a position which would be decisive in this

defendant's favor. Two justices would hold to the contrary.

Later in the same term as Mendenhall, in Reid v. Georgia, 448 US 438 (1980), this Court again addressed the issue. In a per curiam opinion, it reversed a lower court's determination that there had been no seizure of a defendant who had been approached pursuant to a so-called "drug courier profile" by police officer's at the Atlanta Airport. Like this defendant, he had an initial conversation with the agents and, when asked to accompany them, fled and dropped his hand luggage. The opinion, in remanding for reconsideration in light of Mendenhall, reiterated that even a momentary stop "must be supported at least, by a reasonable and articulable suspicion." 448 US at 440. In dissent, Justice Rehnquist would have held there was no seizure. 448 US at 442.

Most recently, in Colorado v. Bannister, 449 US 1 (1980), the Court discussed the what is stop issue in the context of a vehicle



stop and stated: "There can be no question that the stopping of a vehicle and the detention of its occupants constitutes a 'seizure' within the meaning of the Fourth Amendment. 449 US at 4, fn 3.

None of these cases have produced a clear test of when a mere encounter has been raised to a stop. One commentary, Professor LaFave, has rejected the notion that it is decisive whether a reasonable person would feel free to leave, noting the language of the Court in Illinois Migrant Counsel v. Pilliod, 398 F Supp 882 (ND Ill, 1975):

"Implicit in the introduction of the [officer] and the initial questioning is a show of authority to which the average person encountered will feel obliged to stop and respond. Few will feel that they can walk away or refuse to answer."  
LaFave, Search and Seizure, §9.2, p. 50.

A test which looks to the subjective reaction of the citizen or of the officer is also unworkable, according to LaFave. In the first case, the police would not have a

standard for acceptable conduct, and in the latter case, it would be impossible to ever detect, in retrospect, whether a citizen's compliance was unfettered consent or submission to implicit authority. A citizen has the right to expect that police officers can and will exercise their authority without offensive or aggressive conduct. Even an arrest can, and usually should, be accomplished without any more overt restraint than a firm "please come with me."

LaFave suggests instead a test that focuses on whether the police have conducted themselves in a manner consistent with what would be viewed as "nonoffensive conduct if it occurred with two ordinary citizens." LaFave, Search and Seizure, §9.2, p. 53. He gives one example of conduct amounting to a seizure that is especially appropriate here: "Such tactics as pursuing a person who has attempted to terminate the contact by departing \* \* \*." LaFave, §9.2 at 54.

The Defendant here was interrupted in his progress; he was asked by self-identified narcotics agents to produce his ticket and identification; and he was asked to go to a place referred to as a "disclosed room.". At the point that agents of the state, with all the inherent authority which their badge and their right to be armed invest them, ask a citizen to interrupt his passage and go, for an undisclosed period of time, to the other side of a closed door, that person is detained. Applying LaFave's test, if the average person had been asked that by an ordinary citizen, he would have called the police.

Roosevelt Chambers' and Officer Capone's subjective impressions may not be the test, but they surely illustrate the coercion inherent in the moment. Chambers did not feel free to walk away, he ran. Officer Capone pulled his weapon into plain view and gave chase, yelling "Stop police." One intended and the other felt a restraint

beyond that which an ordinary citizen can normally impose on another. That is a seizure.

C. The stop was not based on articulable reasonable suspicion

The government has never seriously contend that there was any reasonable suspicion to stop Chambers. He did not fit the drug-courier-profile, he dressed as a businessman, and he paid for his ticket with an American Express Card in his own name. The only thing the least bit suspicious about him, according to the police, was that he looked at them out of the corner of his eye (when he was not staring straight ahead) and twice glanced to see the baggage moving down the conveyer belt. The District Court characterized this as a "hunch" and rejected the suggestion that it amounted to reasonable suspicion, stating:

"And you can see from the expressions on the faces of these drug agents here that is true, they draw the suspicious inferences from each side of that coin. I don't say

that critically, but from the standpoint of analysis, if he goes up there and looks around, that is a badge of suspicion. If he goes up there and stares straight ahead, for example, I go up to the ticket counter and sometimes I stare straight ahead because I am madder than a wet hen over some scheduling foul-up that United or Northwest has involved me in, and I am staring a hole through that agent. And my eyes, if anything, are moving very slightly to either side. That is a badge of suspicion, when all it merely means is I am thinking to myself if there is any way in the world I can get back at these airlines, I am going to do it. And in drug terms, it's that innocent. But to a surveilling officer, it is at least at that juncture and for sometime thereafter a badge of suspicion.

"Okay. You have got the eye movement or lack thereof and the posture at the ticket counter, you have got a one-way ticket and you have got a shifting of the eyes---.

\* \* \* \* \*

"There are a lot of folks at an airport who keep an eye on that bag to make sure it gets on that conveyor because they have had experiences in the past when they didn't do it and somebody at the airline goofed. And you and I end up in Ft. Lauderdale or Columbus or somewhere and you don't have a suitcase and your suitcase has got your shaver in it and that is enough to make anybody upset and irate. You

don't have to be an Article III judge to be upset over that." (RT 57-9)

D. The Defendant's consent was both invalid and revoked

If Defendant was "stopped" and if the stop was not based on reasonable suspicion, then the purported consent fails as the fruit of the poisonous tree. Brown v. Illinois, 422 US 590 (1975).

Even, however, if the encounter was lawful, the consent was revoked as a matter of law when the Defendant, carrying one of the bags and leaving the other on a common carrier, fled. It was only then that the suitcase was seized. (RT 76) It was apparent even to Officer Capone that Chambers " \* \* \* didn't want to talk \* \* \* from the moment he took off." (Tr. 19, 20) <sup>1</sup> Any consent he had given, he took back and took with him when he outraced agent Capone.

- 
1. The District Court also found that Chambers abandoned his suitcase by fleeing. That was not, however, a basis for the Ninth Circuit's opinion and, for that reason alone, is not raised here.

**CONCLUSION**

For the stated reasons, Petitioner prays that a writ of certiorari be issued to review the judgment rendered by the United States Court of Appeals for the Ninth Circuit.

Respectfully submitted,

HOFFMAN, SLADER & MATASAR

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TRANSCRIPT OF PROCEEDINGS  
P. 73-78

The facts of this case are not in any real dispute here. There was a brief encounter at the Ft. Lauderdale Airport about September 15th of this year.

Officer Capone saw the Defendant enter the terminal. He saw him go to a Delta counter where tickets may be purchased and baggage checked.

There Mr. Chambers purchased with a credit card a one-way ticket to Portland on a flight which had intermediate stops at Atlanta and Seattle.

Defendant checked on his suitcase but did not check his soft leather attache case. During the ticket transaction, he stared straight ahead and according to Agent Capone, occasionally shifted his eyes from left to right without moving his head. Agent Capone and his partner there, Agent Jenkins, had taken up a position about four to five



feet from and on either side of and slightly behind the Defendant.

After the Defendant's suitcase was placed on the conveyer belt, he looked at it once or twice while it was moving on the belt toward its destination and while Defendant himself was walking toward the departure gate.

Capone's professional suspicion was aroused by the following:

A. Ft. Lauderdale is a source city for drugs;

B. Defendant purchased a one-way ticket as opposed, for example, a checking in for a return flight from Portland;

C. Defendant stared straight ahead except while looking left to right and had Defendant looked at his bag once or twice as it was moving away on the conveyer belt.

As a result of the arousal of his suspicions, Agent Capone approached Defendant and produced his identification. He

identified himself as a police officer and asked Defendant to stop and answer questions. Defendant said he would. Defendant also said he would go to a nearby room, a location for the conversation proposed by Capone. Defendant also said he had no objection if his suitcase and attache case were inspected.

Agent Capone, though armed, did not display his weapon.

Upon request, the Defendant produced his airline ticket. And in response to a question stated that he had no identification.

Upon receiving these responses with respect to the suitcase and attache case, Capone then signaled his partner, Jenkins, who was standing near the end of the conveyer belt. That is near the location where it would disappear from the checking area and hence the loading area.

Jenkins then stepped to the location along the conveyer belt where the suitcase was located. The conveyer belt was,

apparently, a start and stop affair common in some airport facilities. Thus, the suitcase was still in the area. Jenkins removed the suitcase.

In the meantime, Capone, after giving the signal to Jenkins, turned around and took a step or two toward the interview room. His testimony, as I remember, was one step, though there may perhaps have been more than one.

The Defendant also took one step, perhaps two, but Defendant then bolted for the door and left the terminal, his movements including jumping a chain-link fence into the parking area. Either by accident or design, however, the attache case, unlike Defendant, did not clear the fence and was retrieved by Capone.

It is unclear whether Defendant--whether or not Defendant intended to leave the attache case behind. It is also uncertain whether Jenkins had taken the suitcase off

the conveyer belt before Defendant bolted for the door. I find that removal of the suitcase from the conveyer belt took place after the Defendant's escape commenced.

Defendant's wallet and a rental car receipt were found in the parking lot. The suitcase was forced open and two kilos of cocaine were found, proving that Capone's hunch was a good deal sounder than the average prediction of Jimmy the Greek on the football pregame shows.

The Government does not intend to offer any evidence from the attache case or the wallet.

The Government argues:

1. No stop occurred;
2. If there was a stop, no seizure took place;
3. If there was a stop, founded suspicion for it existed;
4. In any event, there was consent to the stop, to questioning, and to search of

the suitcase.

Now, perhaps the Government concedes that consent to search the attache case was revoked when Chambers bolted.

No. 5, in any event, Defendant abandoned the suitcase, the only item in which we are currently interested.

Defendant, on the contrary, argues:

1. There was a seizure for which no probable cause or founded suspicion existed;

2. If no seizure occurred, there was an investigatory stop for which no founded suspicion or insufficient founded suspicion existed;

3. If consent was voiced or communicated, it was not freely given and hence invalid;

4. In any event, no consent was given as to the suitcase, nor was it abandoned.

If I follow Mendenhall, I would deny the motion; if I follow Reed, I would grant the motion. Reed is no laconic as to be of

almost no help, especially in light of Mendenhall. Mendenhall suffers from loquacity, not laconicness, and is similarly uninformative. But chose I must, without any particular help from Ninth Circuit opinions. I mention that in regards to a couple of cases that you gentlemen may be interest in studying U.S. vs. Allen, 644 F. 2d, 749, U.S. v. Pitano, 649 F. 2d 724. I deny the motion to suppress.

Capone's hunch, while found, was just that, a hunch. But his contact with Defendant was neither terrorizing, overbearing or otherwise inappropriate. He simply asked Defendant to talk to him. The Defendant chose not to do so, though the facts established at the hearing show he was absolutely free to refuse. Defendant was similarly free to choose to talk where the encounter occurred in the terminal rather than in the interview room; Defendant was similarly free to refuse to allow inspection

of his suitcase and attache case.

He chose to do so freely and cannot now complain.

I find and hold there was no seizure; there was, indeed, no stop, as that term has been used. If, however, this finding or conclusion is in error, I further find that if a stop had occurred. it was based upon the consent which was present and which was communicated by the Defendant. This was proved by the Government by a preponderance of the evidence. I find and hold that such consent covered both the suitcase and the attache case, though I need not make the consent finding as to the attache case since no use of it is to be made.

As to the factor of the abandonment, I find and hold that Defendant abandoned the suitcase when he fled. If it were necessary to determine the abandonment of the attache case, since the Government has the burden, its proof fails in that regard.

If this ruling is in error in view of Reed v. Georgia, I leave it to the Court of Appeals to say so.

The foregoing are findings and conclusions under Rule 23.



DEFENDANT

ROOSEVELT CHAMBERS

U.S. DISTRICT COURT OF DISTRICT OF

DOCKET NO.

CR61-1000

COUNSEL

In the presence of the attorney for the government  
the defendant appeared in person on this date

MONTH DAY YEAR

February 4 1982

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

David Glader

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that  
there is a factual basis for the plea,

☐ NOT TO CONTENDERE,

☐ NOT GUILTY

FINDING &  
JUDGMENT

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged

☐ GUILTY.

Defendant has been convicted as charged of the offense(s) of Interstate travel to promote racketeering, in violation of 18 USC 1952(a)(3) and 2, as charged in the indictment.

**PLEA**

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☐ NOT GUILTY

**FINDING &  
JUDGMENT**

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged

☒ GUILTY.

Defendant has been convicted as charged of the offense(s) of interstate travel to promote racketeering in violation of 18 USC 1952(1)(3) and 2, as charged in the indictment.

**SENTENCE  
OR  
PROBATION  
ORDER**

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of four (4) years, 18 USC 1205(a) and fined in the amount of \$10,000.00.

**SPECIAL  
CONDITIONS  
OF**

ADDITIONAL  
CONDITIONS  
OF  
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or suspend the period of probation, and at any time during the probation period or within a maximum probation period of five years permit the U.S. Marshal to issue a warrant and commit to probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☒ U.S. District Judge

☐ U.S. Magistrate

*James M. Burns*  
JAMES M. BURNS

Date

2-11-82

Certified to be a true and correct  
copy of original filed in my office.  
Dated 2-11-82  
By *Robert M. Christ* Clerk  
*DeRocette* Deputy

Entered on the Docket on  
2/11/82  
ROBERT M. CHRIST  
By *DeRocette* Deputy

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-Appellee,	)	C.A. No. 82-1113
	)	
v.	)	D.C. #CR 81-109 BU
	)	
ROOSEVELT CHAMBERS,	)	MEMORANDUM
	)	
Defendant-Appellant.)	)	

Argued and Submitted -- October 6, 1982

Appeal from the United States District Court  
for the District of Oregon  
The Honorable James M. Burns, Chief Judge, Presiding

Before: WALLACE, FARRIS and POOLE, Circuit Judges

The defendant-appellant Roosevelt Chambers appeals his conviction of interstate travel in aid of racketeering, 18 U.S.C. §§1952(a)(3) and 2. Because we find that the district court did not err in determining that the initial encounter between Chambers and the law enforcement officer did not constitute a seizure and that Chambers' consent to the search of the suitcase was

valid, we affirm the conviction.

Chambers contends that the confrontation between himself and Officer Capone as he left the airlines ticket counter constituted a seizure within the meaning of the fourth amendment. The essential inquiry is whether at the point when Chambers was stopped, a reasonable person in Chambers' position would have felt free to leave. United States v. Mendenhall, 446 U.S. 544, 552-55 (1980) (opinion by Stewart, J., joined by Rehnquist, J.); Terry v. Ohio, 392 U.S. 1, 19 n.16 (1968); United States v. Patino, 649 F. 2d 724, 726-27 (9th Cir. 1981). Whether the act of staying and answering questions was voluntary is "largely a factual inquiry dependent upon the totality of the circumstances," and deference must be given to the finding of the district court unless it is clearly erroneous. United States v. Patino, 649 F. 2d at 727.

The stipulated facts indicate that the defendant's mobility was not impaired, the

questions were routine and brief, the atmosphere was not "dominated" by law enforcement personnel, and the defendant agreed to answer the questions "in a spirit of apparent cooperation." United States v. Beale, 674 F. 2d 1327, 1329-30 (9th Cir. 1982) (citations omitted). The facts of this case closely parallel those of Beale insofar as the airport encounter between the defendant and the officer is concerned, and as in Beale, we find no evidence of a clearly erroneous determination on the part of the district court in its finding that the encounter was not a seizure within the meaning of the fourth amendment.

Because we do not find that the encounter between Chambers and the officer was a seizure, it follows that the consent obtained from Chambers for the search of his suitcase was not in any way "tainted."

Wong Sun v. United States, 371 U.S. 471 (1963); United States v. Chamberlin, 644 F. 2d 1262, 1268-69 (9th Cir. 1980), cert.

denied, 453 U.S. 914 (1981). The consent of course must be freely given, and here the district court found that the government met its burden in demonstrating that the consent was voluntary. Since the voluntariness of the consent "is a question of fact to be determined from the totality of all the circumstances," Schneckloth v. Bustamonte, 412 U.S. 218, 227 (1973), the district court's finding must be upheld unless clearly erroneous. No showing has been made that the district court so erred.

The contention that Chambers' subsequent flight acted to revoke his earlier consent to the search of the suitcase is without merit.

The judgment of the district court is accordingly AFFIRMED.

No. 82-1424

Office-Supreme Court, U.S.  
FILED

APR 25 1983

ALEXANDER L. STEVAS,  
CLERK

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**In the Supreme Court of the United States**

OCTOBER TERM, 1982

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**ROOSEVELT CHAMBERS, PETITIONER**

v.

**UNITED STATES OF AMERICA**

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**ON PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS FOR  
THE NINTH CIRCUIT**

---

**BRIEF FOR THE UNITED STATES IN OPPOSITION**

---

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### **QUESTIONS PRESENTED**

1. Whether petitioner was subjected to a seizure regulated by the Fourth Amendment when he was approached by a police officer who asked whether petitioner was willing to speak to him.

2. Whether petitioner's flight from a police officer effectively revoked the consent he had given the officer to search his suitcase.

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## **OPINION BELOW**

The memorandum opinion of the court of appeals (Pet. App. C 1-4) is unreported.<sup>1</sup>

## **JURISDICTION**

The judgment of the court of appeals was entered on December 20, 1982. The petition for a writ of certiorari was filed on February 25, 1983, as of February 18, 1983. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## **STATEMENT**

Following denial of his motion to suppress contraband found in his suitcase (Pet. App. A 1-9) and a nonjury trial in the United States District Court for the District of Oregon,

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<sup>1</sup>Pursuant to 9th Cir. R. 21, the opinion of the court of appeals lacks precedential value.

petitioner was convicted of interstate travel to promote racketeering, in violation of 18 U.S.C. 1952(a)(3). He was sentenced to four years' imprisonment and a fine of \$10,000. The court of appeals affirmed (Pet. App. C 1-4).

1. The evidence at the suppression hearing showed that on September 15, 1981, Sheriff Ralph Capone was detailed to the Ft. Lauderdale, Florida, airport narcotics unit. At approximately 9:00 p.m. he was watching travelers at the Delta Airlines ticket counter when he observed petitioner approaching the counter and purchasing a one way ticket to Portland, Oregon (Tr. 3-7). Petitioner paid for the ticket with an American Express Card and checked one suitcase. The suitcase was placed on a luggage conveyor belt. Petitioner retained his attache case, the only other piece of luggage he had been carrying (Tr. 7-8).

After purchasing the ticket, petitioner walked toward the departure area (Tr. 8). At this point, Sheriff Capone approached petitioner, displayed his badge and identification and stated, "I am a deputy sheriff. Would you mind speaking to me?" (Tr. 9). Sheriff Capone was dressed in plain clothes, did not display a weapon, and spoke in a normal tone of voice (Tr. 9, 22). Petitioner responded, "[s]ure, I will talk to you" (Tr. 9). Sheriff Capone then asked to see petitioner's ticket and some identification. Petitioner turned over his ticket only, which Sheriff Capone examined and returned (Tr. 9-10).

Sheriff Capone explained to petitioner that he was investigating possible narcotics violations and asked permission to search the suitcase petitioner had checked and his attache case. Petitioner replied, "[y]ou can look in my baggage" (Tr. 10). At this point, Capone signaled to a colleague, Ft. Lauderdale Police Officer John Jenkins, to retrieve the checked suitcase from the conveyor belt (Tr. 10, 39). Sheriff Capone asked petitioner if he would follow him to a small

room near the Delta ticket area (Tr. 11). Capone and petitioner had each taken one step toward the room, when petitioner suddenly turned and bolted. Petitioner left the terminal and climbed over a chain link fence, dropping his attache case on the way over. He landed in a rental car parking lot. Sheriff Capone pursued, but he slipped and fell and was unable to catch petitioner (Tr. 11-14). After looking through the parking lot, however, Capone found a crumpled car rental receipt and petitioner's wallet (Tr. 14-15, 40).

While petitioner was fleeing, Officer Jenkins picked up the checked suitcase. When Sheriff Capone returned from the parking lot, the two men searched the suitcase and found two kilograms of cocaine (Tr. 16-17, 39).

2. Prior to trial, petitioner moved to suppress the cocaine, contending that he was illegally detained by Sheriff Capone at the airport and that he did not freely consent to the search of the suitcase. In the alternative he argued that he had effectively revoked his consent when he fled. The district court rejected each of these contentions. The court concluded (Pet. App. A 8; Tr. 78) that petitioner was not seized by Sheriff Capone in the initial encounter. The court found that petitioner had voluntarily consented to speak with Capone and that he had consented to the search of the suitcase. In addition the court held that petitioner had abandoned the suitcase when he fled. For all of these reasons, the district court found no Fourth Amendment violation and denied petitioner's motion to suppress (*ibid.*).

c. The court of appeals affirmed. It too ruled (Pet. App. C 1) that "the initial encounter between [petitioner] and the law enforcement officer did not constitute a seizure." It noted (*id.* at C 2-3) that petitioner's "mobility was not impaired, the questions were routine and brief, the atmosphere was not 'dominated' by law enforcement personnel,

and [petitioner] agreed to answer questions 'in a spirit of apparent cooperation' " (citations omitted). Accordingly, the court held that petitioner's consent to the search of his suitcase was not tainted (*id.* at C 3-4). The court of appeals also upheld the district court's finding that petitioner had voluntarily consented to the search of his suitcase (*id.* at C 4). Finally, the court of appeals rejected (*ibid.*) petitioner's contention that his "subsequent flight acted to revoke his earlier consent to the search of the suitcase."

### ARGUMENT

1. Petitioner contends (Pet. 6-16) that his encounter with Sheriff Capone at the Ft. Lauderdale airport constituted an unlawful seizure. He had asked the Court to hold his petition pending disposition of *Florida v. Royer*, No. 80-2146 (which was decided March 23, 1983), arguing that this Court's decisions established no authoritative test for determining when a person has been seized. The Court's recent decision in *Royer*, however, only confirms that the court of appeals' decision is correct.

This Court has long recognized that not every encounter between a citizen and a police officer constitutes a seizure within the meaning of the Fourth Amendment. "Only when [an] officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred." *Terry v. Ohio*, 392 U.S. 1, 19 n.16 (1968); see also *id.* at 32-33 (Harlan, J., concurring); *id.* at 34 (White, J., concurring); *Sibron v. New York*, 392 U.S. 40, 63 (1968). As Justice Stewart explained in *United States v. Mendenhall*, 446 U.S. 544, 554-555 (1980) (footnotes omitted):

[A] person has been "seized" within the meaning of the Fourth Amendment only if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.

Examples of circumstances that might indicate a seizure, even where the person did not attempt to leave, would be the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled. \* \* \* In the absence of some such evidence, otherwise inoffensive contact between a member of the public and the police cannot, as a matter of law, amount to a seizure of that person.

In *Florida v. Royer, supra*, a majority of the Court endorsed the standard delineated by Justice Stewart for differentiating consensual police-citizen contacts from seizures subject to the requirements of the Fourth Amendment. Slip op. 5-6, 10 (opinion of White, J.); *id.* at 2 (Blackmun, J., dissenting); *id.* at 5 n.3 (Rehnquist, J., dissenting). This is precisely the standard applied by the court of appeals (Pet. App. C 2) and by the district court (Pet. App. A 6-8). The fact-bound question whether that standard was correctly applied on the record of this particular case does not warrant further review. As Justice White explained in *Royer*, slip op. 15, there is no "litmus-paper test for distinguishing a consensual encounter from a seizure \* \* \*. [T]here will be endless variations in the facts and circumstances [of airport encounters such that] it is unlikely that the courts can reduce to a sentence or a paragraph a rule that will provide unarguable answers to the question" whether there has been a seizure.

In any event it is clear from the record of this case that the court of appeals and district court correctly concluded that Sheriff Capone's approach to petitioner did not effect a seizure. None of the factors enumerated by Justice Stewart in *Mendenhall* that might indicate that a seizure had occurred was present here. Sheriff Capone did not display a weapon and made no physical contact with petitioner. He

spoke in a conversational tone of voice and he requested, rather than demanded, that petitioner answer his questions. Petitioner's response, "[s]ure I will talk to you" (Tr. 9), reflects, moreover, that petitioner understood the Sheriff's statement as a request. Nor are the factors that led Justices White, Marshall, Powell, and Stevens to conclude that the bounds of a consensual encounter had eventually been exceeded in *Royer*, slip op. 10 (opinion of White, J.), present here. Sheriff Capone returned petitioner's ticket to him prior to requesting his consent to a search of his luggage. And petitioner freely consented to that search while still in the public area of the airport, and before Sheriff Capone asked him if he would follow him to a room off the concourse. In short, at the relevant juncture, when petitioner gave his consent to search of his luggage, there were no circumstances that would have led a reasonable person, innocent of crime, in petitioner's situation to conclude that he was not free to leave. Petitioner's consent is accordingly untainted by an illegal seizure.<sup>2</sup>

2. Petitioner also claims (Pet. 18) that even if he was not seized, he revoked his consent to search the suitcase when he fled. As the courts below agreed, this contention is unsound. Petitioner never revoked his consent verbally, and his flight

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<sup>2</sup>Because petitioner was not seized at the time he consented to the search, there is no reason to consider petitioner's contention (Pet. 16-18) that Sheriff Capone lacked sufficient grounds to suspect petitioner of a crime at the moment he first approached to justify an investigative detention.

We note that petitioner freely consented to accompany Sheriff Capone to the room off the concourse so that the search could be completed. See pages 2-3, *supra*. This case differs in this respect from *Royer*, slip op. 10 (opinion of White, J.). But even if petitioner were deemed to have been seized when he was asked to accompany Capone, the analysis is unaffected, for petitioner's consent to the search of his luggage, which antedated that request, plainly cannot be considered a fruit of any seizure that followed.



merely evidenced an intent to abandon any expectation of privacy that he may have had in the suitcase. See *Hester v. United States*, 265 U.S. 57, 58 (1924); *United States v. Brown*, 663 F.2d 229, 231 (D.C. Cir. 1981) (en banc); *United States v. McLaughlin*, 525 F.2d 517, 519 (9th Cir. 1975); *United States v. Wilson*, 492 F.2d 1160, 1162 (5th Cir.), cert. denied, 419 U.S. 858 (1974). Petitioner's actions were plainly inconsistent with an intent to exercise control over the suitcase. In the circumstances, the officers, who had by then acquired probable cause as a result of petitioner's flight, were free to search the suitcase without a warrant.

#### CONCLUSION

The petition for a writ of certiorari be denied.

Respectfully submitted.

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APRIL 1983